No. 2762

IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

J. C. KENNEDY and A. J. KENNEDY,

Petitioners;

vs.

S. T. HILLS, as Trustee,

Respondent.

In the Matter of J. C. Kennedy and A. J. Kennedy, Doing Business Under the Firm Name of J. C. Kennedy & Son, Bankrupts.

ON PETITION FOR REVISION

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898; to Revise, in Matter of Law, a Certain Order of the United States District Court for the Eastern District of Washington, Southern Division.

OPENING BRIEF OF PETITIONERS.

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STATEMENT OF THE CASE.

This is a petition to revise an order of the District Judge affirming an order of the Referee in Bankruptcy refusing to allow as exempt two heavy horses

and harness to the bankrupts, J. C. Kennedy and A. J. Kennedy, respectively, under Subdivision 13, Section 563, Remington & Ballinger's Annotated Codes & Statutes of Washington.

The facts are brief and are as follows:

The bankrupts at the time the Petition in Bankruptcy was filed owned said horses as individuals, and both of them were loggers, were engaged in the business of logging, and had families living with and dependent upon them. That they are claiming no other exemptions as loggers. (Transcript p. 10.)

The Lower Court erred in matter of law in refusing to allow said horses as exempt under said section.

ARGUMENT.

The whole statute in question is as follows:

> "Section 563. SPECIFICATION OF EXEMPT PROPERTY.
>
> The following property shall be exempt from execution and attachment, except as hereinafter specially provided:—
>
> 1. All wearing apparel of every person and family;
>
> 2. All private libraries, not to exceed five hundred dollars in value, and all family pictures and keepsakes;
>
> 3. To each householder, one bed and bedding, and one additional bed and bedding for each additional member of the family, and other house-

hold goods and utensils and furniture not exceeding five hundred dollars, coin, in value. The other household goods and utensils and furniture specified above shall on the demand of the officer having the execution or attachment in hand, be selected by the husband, if present, if not present they shall be selected by his wife, and in case neither husband or wife, nor other person entitled to the exemption by having the description of a householder, shall be present to make the selection, then the sheriff shall make a selection of the household goods, utensils and furniture equal in value to said five hundred dollars, and shall return the same as exempt by inventory, and such selection by the sheriff or other person described above shall be prima facie evidence,—1. That such household goods, utensils, and furniture are exempt from execution and attachment; 2. That the value of the property so selected is not over five hundred dollars;

4. To each householder, two cows, with their calves, five swine, two stands of bees, thirty-six domestic fowls, and provisions and fuel for the comfortable maintenance of such householder and family for six months, also feed for such animals for six months: Provided, that in case such householder shall not possess or shall not desire to retain the animals above named, he may select from his property and retain other property not to exceed two hundred and fifty dollars, coin, in value. The selection in the proviso mentioned shall be made in the manner and by the person and at the time mentioned in subdivision three, and said selection shall have the same effect as selections made under subdivision three of this section;

5. To a farmer, one span of horses or mules, with harness, or two yoke of oxen, with yokes and chains, and one wagon; also farming utensils actually used about the farm, not exceeding in value five hundred dollars in coin; also one hundred and fifty bushels of wheat, one hundred and fifty bushels of oats or barley, fifty bushels of potatoes, ten bushels of corn, ten bushels of peas, and ten bushels of onions for seeding purposes;

6. To a mechanic, the tools and instruments used to carry on his trade for the support of himself and family, also material used in his trade, not exceeding in value five hundred dollars in coin;

7. To a physician, his library, not to exceed in value five hundred dollars in coin; also, one horse, with harness and buggy; the instruments used in his practice, and medicines not exceeding in value two hundred dollars in coin;

8. To attorneys, clergymen, and other professional men, their libraries, not exceeding one thousand dollars, in vain, value; also office furniture, fuel, and stationery, not exceeding in value two hundred dollars, in coin;

9. All firearms kept for the use of any person or family;

10. To any person, a canoe, skiff, or small boat, with its oars, sails, and rigging, not exceeding in value two hundred and fifty dollars;

11. To a person engaged in lightering for his support or that of his family, one or more lighters, barges, or scows, and a small boat, with oars, sails, and rigging, not exceeding in the aggregate two hundred and fifty dollars, in coin, value;

12. To a teamster or drayman engaged in that business for the support of himself or his family, his team, consisting of one span of horses, or mules, or two yoke of oxen, or a horse and mule, with harness, yokes, one wagon, truck, cart, or dray;

13. *To a person engaged in the business of logging for his support or that of his family, three yoke of work cattle and their yokes, and axes, chains, implements for the business, and camp equipments, not exceeding three hundred dollars, coin, in value;*

14. A sufficient quantity of hay, grain, or feed to keep the animals mentioned in the several subdivisions of this chapter for six weeks. But no property shall be exempt from an execution issued upon a judgment for the price thereof, or any part of the price thereof, or for any tax levied thereon.

Each person shall be entitled to select the property to which he is entitled under the several subdivisions of this section. (Cf. L. '54, p. 178, Sec. 253; L. '69, p. 87, Sec. 343; L '79, p. 157, Sec. 1; Cd. '81, Sec. 347; L. '83, p. 36, Sec. 1; Y. '86, p. 96, Sec. 1; 2 H. C., Sec. 486.)"

We think it will be conceded that the Courts have uniformly construed exemption laws very liberally, and in construing these statutes the Courts have also held that where the intention of the Legislature was to provide a means of support that the statute should not be strictly construed, or necessarily limited, to the exact words of the statute.

In State vs. Cunningham, 6 Neb. 90, the Court says:

> " 'One yoke of oxen, or pair of horses, in lieu thereof.' (Quoted from the statute.) Mules, are not named in the statute, but the object of the law is to exempt a team for the debtor. If therefore his team consists of mules, they are exempt, although not specifically designated in the statute."

See also

Washburn vs. Goodheart, 88 Ill. 229;
Allison vs. Brookshire, 38 Tex. 199.

It will be noticed that Subdivision 13 of the statute in question uses the term "work cattle." There are two reasons why this term should be construed to include the horses claimed herein. First: Because the term "cattle" includes the term "horses"; Second: Because at the time this statute was passed, more than fifty years ago, both oxen and horses were used in logging, oxen being used almost exclusively. As time passed, however, the number of oxen used in logging decreased, the number of horses used increased.

Taking up our first contention; the term "cattle" is a generic term, including both cattle, horses, mules, asses, and practically all domesticated quadripeds used as beasts of burden.

It is true that the authorities are conflicting, the

following cases holding that the term "cattle" includes horses:

State vs. Hambleton, 22 Mo. 452;
State vs. Clefton, 24 Mo. 376.

These cases were criminal cases and therefore strictly construed, and yet the term "cattle" is held to include horses.

See also

Ohio vs. Brubaker, 47 Ill. 462;
Henderson vs. Railway Company, 81 Mo. 60;
Louisville Railway Co. vs. Ballard, 59 Ky. 177;
Newark Railway Co. vs. Hunt, 12 Atl. 697.

It will be noticed that nearly all of the cases construing the law at the time this statute was passed construed the word "cattle" to include horses.

In Bloomer vs. Todd, 3 Wash. Ter. 599, the Court said:

> "The ordinary use of words at the time when used and the meaning adopted at that time is usually the best guide for ascertaining legislative intent."

Passing to our second contention; it will be noticed that Subdivision 5 of the statute in question mentions horses, mules, and oxen, yokes and chains; Subdivision 7, horses, with harness and buggy; Subdivision 12,

team, horses, mules, oxen. In Subdivision 13, however, the Legislature uses the words "work cattle," which, as we have seen, include the other terms mentioned. Had the Legislature meant to limit this to oxen, why did they not say so? They evidently did not mean to limit the claimant to either oxen or horses, but gave him the benefit of both in the generic term "cattle." If this section is not so construed, it has no meaning, because the Legislature could just as easily have said "oxen" had they so meant.

In 11 R. C. L. 520, it is said:

> "An exemption of a horse as a 'beast of the plow' would seem to cover any work horse."

See also 11 R. C. L. 519.

Further illustrating how statutes of this kind have been construed by the Courts, see

McElveen vs. Goings, 41 So. 229, 116 La. 977,

where the Court held that exemption statutes designated horses also included mules.

In Kennedy vs. Bradbury, 55 Me. 107, 92 Am. Dec. 572, it was held that a horse includes a colt.

Also Richardson vs. Duncan, 49 Tenn. 220.

In Roberson vs. Robertson, 2 Wellson Cup. Cas. Ct. App. 254, it was held that the term horse includes jackass.

In Roberts vs. Parker, 117 Ia. 389, 90 N. W. 744, the Court construed an exemption statute allowing "a team with vehicle" to include a bicycle, although a bicycle was unknown at the time the statute was passed.

In Parker vs. Sweet, 12 S. W. 881, the Court said, in allowing an automobile as one "carriage or buggy":

> "Of course automobiles were unknown to our lawmakers when the statute under consideration was passed (1897) and they could not have had in mind specifically to exempt such vehicle, but this was not necessary."

See also

Peevehouse vs. Smith, 152 S. W. 1196.

As before stated, exemption statutes have always been construed, and should be construed, to allow to the claimant his exemptions, if possible, and to effect the intentions of the Legislature to allow the claimant a means for earning his living.

We therefore respectfully contend that the order of the District Judge should be reversed.

Respectfully submitted.

FABIAN B. DODDS,

Attorney for Petitioners.